

ENTERED

April 13, 2017

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MANTISSA CORPORATION,

Plaintiff,

VS.

ONDOT SYSTEMS, INC., *et al*,

Defendants.

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CIVIL ACTION NO. 4:15-CV-01133

ORDER

This case concerns a patent dispute. Plaintiff Mantissa Corporation has filed this action against Defendants Ondot Systems, Inc., Lone Star National Bank, and Lone Star National Bancshares-Texas, Inc. (collectively “Defendants”).

Pending before the Court are a Report and Recommendation of United States Magistrate Judge Dena Hanovice Palermo (Doc. No. 76), Defendants’ Motion for Judgment on the Pleadings and Renewed Motion for Judicial Notice (Doc. No. 80, incorporating Doc. No. 46), and Plaintiff’s Motion for Leave to Submit a Surreply (Doc. No. 91). After considering the motions, responses thereto and the applicable law, the Court finds that: the Report and Recommendation should be adopted; the Motion for Judgment on the Pleadings and the Renewed Motion for Judicial Notice shall be referred to Judge Palermo; and the Motion for Leave to Submit a Surreply must be granted.

I. REPORT AND RECOMMENDATION

The Court referred this case to Judge Palermo for a hearing on the parties’ construction of claims terms, pursuant to 28 U.S.C. § 636(b)(1)(B). The Report and Recommendation addresses claims terms selected by the parties and provides definitions for four disputed terms/phrases/paragraphs of the patents that are at the center of this litigation. Defendants filed

timely objections to three constructions. (Doc. No. 78.) Plaintiff accepts the Report and Recommendation as filed. (Doc. No. 79.)

As required by 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of the portions of the Report and Recommendation to which Defendants objected. Specifically, Defendants argue that no construction is needed for the terms in question because the terms are readily understood. However, the Court agrees with Judge Palermo that the terms in question require construction and further agrees with the conclusions and the reasoning of the Report and Recommendation. Accordingly, the Court hereby adopts the claims terms as construed by the Report and Recommendation.

II. DEFENDANTS' MOTIONS

Defendants have filed a Motion for Judgment on the Pleadings and a Renewed Motion for Judicial Notice. (Doc. No. 80; Doc. No. 46.) While reserving their objections to the Report and Recommendation, Defendants accept the recommended term constructions for the purposes of the motion. The Court hereby refers these motions to Magistrate Judge Palermo for a report and recommendation in accordance with 28 U.S.C. § 636(b)(1)(B). In light of this referral, the parties are strongly encouraged to consider consenting to having the full case, including trial, heard by Judge Palermo.

III. PLAINTIFF'S MOTION FOR LEAVE TO SUBMIT SURREPLY

Plaintiff has requested leave to submit a surreply to Defendants' reply brief regarding its Motion for Judgment on the Pleadings. (Doc. No. 91.) Plaintiff contends the surreply is necessary in order to adequately address Defendants' "new arguments and factual claims, and a newly-cited-and-applied Federal Circuit case in Defendants' Reply" and "to notify the Court of recently obtained evidence relevant to the issues before the Court." (Doc. No. 91 at 1.)

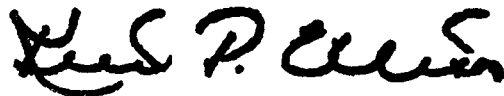
Defendants respond that Plaintiff's surreply raises irrelevant arguments and evidence. (Doc. No. 93.) The Court finds that although Defendants' reply brief does not make the novel arguments that Plaintiff suggests, it discusses new cases that may be pertinent to the determination of the Motion for Judgment on the Pleadings. Therefore the Court will allow Plaintiff the opportunity to address the issues raised and grants leave for Plaintiff to submit the surreply under seal.

IV. CONCLUSION

For the foregoing reasons, the Court: **ADOPTS** the construction of the claims terms in the Report and Recommendation (Doc. No. 76); **REFERS** the Motion for Judgment on the Pleadings and the Renewed Motion for Judicial Notice to Magistrate Judge Palermo (Doc. No. 80); and **GRANTS** Plaintiff's Motion for Leave to Submit a Surreply (Doc. No. 91).

IT IS SO ORDERED.

SIGNED at Houston, Texas on the 13th of April, 2017.

A handwritten signature in black ink, appearing to read "Keith P. Ellison", written in a cursive style.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE